

Honorable Sharon S. Armstrong

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

RUD OKESON, DORIS BURNS, WALTER
L. WILLIAMS and ARTHUR T. LANE,
individually and on behalf of the class of all
persons similarly situated,

Plaintiffs,

v.

THE CITY OF SEATTLE,

Defendant.

CLASS ACTION

NO. 02-2-05774-8SEA

FINDINGS OF FACT AND CONCLUSIONS
OF LAW RE: STREETLIGHT REMEDY AND
PHASE I

This matter is a class action under CR 23(b)(1) and (2) brought by ratepayers of Seattle City Light (other than the City of Seattle itself and those suburban cities with which Seattle City Light has franchise agreements) against the City of Seattle. The case came on for trial before the undersigned judge of this Court on April 12, 2004. The Court determined that certain issues, including those concerning (1) streetlights, (2) the 1% for Art program, (3) Seattle's legal expenses in this action and in the related *Sonntag* action, and (4) alleged general governmental expenses charged by Seattle to City Light, were to be tried to the Court without a jury in Phase I of the trial, and that remaining issues concerning whether City Light had been overcharged for services would subsequently be tried to a jury in Phase II.

Phase I commenced on April 15, 2004. The Court heard opening statements of counsel on that day and heard evidence on April 15, 19-21, and 28-29, 2004 and on May 3, 2004, and heard closing arguments

1 of counsel on May 5, 2004.

2 Plaintiffs, named class representatives Rud Okeson, Walter Williams, Arthur Lane, and Doris
3 Burns, appeared personally and through their counsel of record David F. Jurca, Richard S. White and
4 Jennifer S. Divine of the firm of Helsell Fetterman LLP. Defendant City of Seattle appeared through its
5 counsel of record William H. Patton and Rebecca Earnest of the Seattle City Attorney's Office.

6 The witnesses who were called and testified at trial are listed in Exhibit A.

7 The exhibits that were offered, admitted into evidence, and considered by the court are listed in
8 Exhibit B.

9 Based on the evidence presented, the Court now makes the following:
10

11 **FINDINGS OF FACT**

12 **A. General**

13 1. Each of the plaintiffs is a present or former ratepayer of Seattle City Light. The Court
14 has previously certified that for purposes of this litigation the four named plaintiffs are appropriate
15 representatives of the class of all persons or entities who are or were at any time since December 24,
16 1999 ratepayers of Seattle City Light, other than the City of Seattle itself and the cities of Burien, Lake
17 Forest Park, Sea-Tac and Shoreline.

18 2. Defendant City of Seattle is a municipal corporation and a first-class charter city. Pursuant
19 to this status, Seattle has authority to operate a municipal electric utility. Seattle owns and operates Seattle
20 City Light as a proprietary electric utility and as a department of the City. As a department of the City,
21 City Light is subject to general ordinances, policies, and budget processes of the City. City Light operates
22 in much the same manner as a proprietary business.

23 3. City Light finances are kept separate from the finances of Seattle's other governmental
24
25

1 operations. City Light's revenues are paid into, and its expenses are paid out of, the "Light Fund,"
2 whereas Seattle's other revenues and expenses are paid into or out of the "General Fund" or other funds or
3 accounts of Seattle.

4 4. Seattle imposes the statutory maximum 6% utility tax on utilities operating within the City,
5 including City Light. The tax payments go to the City's General Fund and are used to support the City's
6 general governmental activities. The amount of such utility tax paid by City Light to the City in the year
7 1999 was \$21,791,151, in the year 2000 was \$24,002,685, in the year 2001 was \$30,648,910, and in the
8 year 2002 was \$33,913,510.

9
10 **B. Streetlights**

11 5. In November 1999 Seattle adopted Ordinance 119747, setting a new schedule of rates for
12 City Light customers, effective as of December 24, 1999. The ordinance had the effect of shifting the
13 costs of streetlighting in Seattle from the General Fund to City Light and its ratepayers. In its decision
14 dated November 13, 2003, the Washington Supreme Court held that providing public streetlighting is a
15 governmental function and that shifting the costs of streetlighting from Seattle's General Fund to City
16 Light ratepayers constituted imposition of an unlawful tax on City Light ratepayers.

17
18 6. Ordinance 119747 adopted rate schedules that included an add-on, attributable to
19 recovering a portion of Seattle's streetlighting costs, in the amount of .0705¢ per kwh to all non-streetlight
20 rates for customers in Seattle. It was originally intended that the streetlight add-on would be increased
21 from .0705¢/kwh to .0776¢/kwh as of March 1, 2002, but due to a series of other rate increases in 2001 the
22 planned March 1, 2002 increase in the streetlight add-on did not take place. From December 24, 1999 to
23 November 13, 2003 the amount of the streetlight add-on paid by non-streetlight ratepayers in Seattle was
24 \$21,512,141. There has been no rollback or removal of the streetlight add-on since it went into effect on
25

1 December 24, 1999, either before or after the date of the Supreme Court's decision in this case on
2 November 13, 2003. Thus, after Ordinance 119747 went into effect on December 24, 1999, until
3 November 13, 2003, non-streetlight ratepayers in Seattle paid an additional .0705¢/kwh, attributable to
4 streetlighting, for each kwh of electricity for which they have been billed. This additional rate results in
5 billings to ratepayers of approximately \$500,000 per month.

6 7. Meanwhile, from the time Ordinance 119747 went into effect on December 24, 1999 until
7 the date of the Washington Supreme Court's decision in this case on November 13, 2003, City Light
8 continued to prepare monthly bills (referred to in this litigation as "pseudo-bills") to the City's General
9 Fund for streetlighting, although those bills were not sent. Those pseudo-bills were based on the Schedule
10 T streetlight rates set forth in the ordinance, which were applicable to streetlight customers other than the
11 City. Those rates did include the planned increase on March 1, 2002. City Light resumed billing the City
12 for streetlighting on November 13, 2003. Since that date the City has been billed for streetlighting at the
13 Schedule T rates. The total amount that the City's General Fund would have been billed for streetlighting
14 from December 24, 1999 through November 13, 2003 based on the Schedule T rates reflected in the
15 pseudo-bills is \$23,863,614.96.
16
17

18 8. Even if they had been applied throughout the period in question, the Schedule T rates
19 would have been insufficient to recover the actual costs of public streetlighting in Seattle. The reasons for
20 this included (1) the fact that the Schedule T rates reflected a "gradualism" adjustment to reduce the
21 amounts otherwise payable for streetlighting and (2) the fact that there were substantial increases in the
22 costs of purchased power in 2000 and 2001 that were not reflected in the Schedule T rates. The rates for
23 other classes of service were increased substantially in a series of rate increases in 2001 as a result of the
24 increases in the cost of purchased power in 2000 and 2001, but there were no such increases in the
25

1 Schedule T rates for streetlighting. Due primarily to the increases in the costs of purchased power in 2000
2 and 2001, during 2000 through 2003 no class of ratepayers paid the full cost of service despite the
3 series of rate increases in 2001.

4 9. Based on the best available information, including the actual amount of streetlighting
5 energy used in 2000, 2001, 2002 and 2003 as reflected in the pseudo-bills, the actual Seattle public
6 streetlighting costs from January 1, 2000 to March 31, 2004 amounted to approximately \$33,218,052.
7 Assuming the average monthly streetlighting costs in 2004 are the same as in 2003, the streetlighting costs
8 for each additional month in 2004 after March are \$702,583.
9

10 10. Gradualism is a basic principle of ratemaking that applied to a number of different rates in
11 the 1999 and 2001 ratemaking processes. It is a fundamental principle of ratemaking that the customer
12 must know in advance what the rate will be so the customer can choose how much electricity to use. If
13 gradualism cannot be applied to rates charged to the City's General Fund because of Accountancy Act
14 principles, then rates previously charged to other governmental entities for streetlights and other electrical
15 service must also be retroactively revised.
16

17 11. Virtually risk-free investments likely to be used for small amounts of cash accumulated
18 monthly by residential ratepayers would be notes, passbook savings, money market accounts, or
19 certificates of deposit. An average rate of return on investments of those types over the four-year period at
20 issue here would be 2 percent per annum.

21 12. A reasonable proxy for short-term, secure investments by larger commercial and other
22 institutional ratepayers can best be represented by the return Seattle receives on short-term cash
23 investments. That rate for the four-year period averages 4.5 percent per annum.
24
25

1 **C. Mayor's Office**

2 13. Seattle charged City Light \$142,784 in 2000, \$146,354 in 2001 and \$150,012 in 2002, and
3 was projected to charge \$149,800 in 2003, for expenses of the Mayor's Office. In the absence of other
4 evidence, it is reasonable to assume that Seattle is charging City Light approximately the same amount per
5 month in 2004 as it did in 2003 for expenses of the Mayor's Office.

6 14. The Mayor and his office serve the general, overall interests of Seattle, not of City Light in
7 particular. While none of the members of the Mayor's staff has primary responsibility for supervising or
8 otherwise managing the affairs of City Light, Mayor's Office staff have provided analysis on power
9 purchase and sales decisions, licensing applications, superintendent confirmation, the California energy
10 crisis, and billing errors. The staff also works with other utilities across the country to develop energy
11 policy. The Mayor's Office staff spends approximately 20% of its time on utility oversight, of which a
12 significant percentage is oversight of City Light.
13

14 15. An independent consultant study recommended that the amount of Mayor and Council staff
15 oversight of City Light matters be substantially increased and that those persons develop greater technical
16 expertise in electrical energy matters.
17

18 16. The Superintendent of City Light is its Chief Executive Officer. The Mayor and his staff
19 serve a general governmental function of oversight and coordination with other Seattle departments.
20 While this activity may benefit City Light, it is of a general administrative nature and facilitates the
21 Mayor's performance of his duties. The work of the Mayor's Office is governmental rather than
22 proprietary in nature.
23

24 **D. Office of Sustainability and Environment (OSE)**

25 17. The City charged City Light \$100,000 in 2001, \$100,000 in 2002, and \$153,900 in 2003

1 for expenses of the City's Office of Sustainability and the Environment. In the absence of other evidence,
2 it is reasonable to assume that the City is charging City Light approximately the same amount per month in
3 2004 for OSE expenses as it did in 2003.

4 18. OSE was formed in 2000 from its predecessor in the Department of Administrative
5 Services. OSE is the City's central policy and program development office for environmental issues. It
6 works to develop an environmental policy framework for the whole City. OSE helps elected officials, City
7 departments and other partners such as governments, institutions, businesses, households and citizens
8 better understand and apply the principles and practices of sustainability to their work.
9

10 19. OSE's April 2003 Annual Progress Report lists numerous accomplishments that benefit
11 Seattle as a whole, for example, "Develop Green Fleet initiative, Reduce pesticide use on City golf
12 courses, Increase efficiency of parks' irrigation systems, Cut City paper use, Transition to flat-screen
13 computer monitors; Develop Urban Forest Restoration initiative, Provide environmental stewardship
14 program in community centers, Complete 'Greening Seattle's Affordable Housing' guide, Partner with
15 Clean Air Agency to develop regional climate protection program." None of these efforts concern only
16 City Light.
17

18 20. Within OSE's general mission, City Light uses several specific services, including
19 technical expertise on reducing pesticide and herbicide use, greenhouse gas emissions, and truck fleet
20 emissions. These are services that are critical to City Light operations. If it did not obtain this expertise
21 from OSE, City Light would hire such expertise or buy the services elsewhere at greater expense. Other
22 services, such as coordinating urban forest decisions with other Seattle departments, or participating in a
23 coordinated response to the West Nile virus, serve primarily a general governmental function rather than
24 the utility function of furnishing electricity to utility customers.
25

1 **E. Small Business Assistance**

2 21. The City charged City Light \$62,036 in 2002 and \$140,000 in 2003, and is budgeted to
3 charge City Light \$166,000 in 2004, for expenses of the City's Small Business Assistance program.

4 22. The Small Business Assistance program was established by Ordinance 120888 in 2002 to
5 facilitate the implementation of RCW 35.22.650. The purpose of the program is to train potential small-
6 business contractors and subcontractors to be aware of and conversant with the public bidding process for
7 City Light and other Seattle contracts. The program, which is operated by the Urban League of
8 Metropolitan Seattle under a contract with Seattle, provides assistance to small, economically
9 disadvantaged businesses, including firms owned by women and minorities, to help them compete more
10 effectively.
11

12 23. City Light pays a portion of the training outreach program based on the amount of its
13 capital improvements budget for any given year. While it is hoped that the program will produce a larger
14 pool of contractors and subcontractors to bid on City Light contracts, and that the contractors who win the
15 bids will be better able to complete their work, there is no evidence quantifying this benefit, and the
16 benefit may be only speculative. The Small Business Assistance program serves a general governmental
17 function, and there is insufficient nexus with the primary utility function of furnishing electricity to utility
18 customers.
19

20 **F. Department of Planning and Development (DPD/DCLU)**

21 24. The City charged City Light \$335,400 in 2000, \$450,000 in 2001, \$661,250 in 2002 and
22 \$423,400 in 2003 for expenses of the City's Department of Design, Construction and Land Use (DCLU),
23 now called the Department of Planning and Development. In the absence of other evidence, it is
24 reasonable to assume that the City is charging City Light approximately the same amount per month in
25

2004 for DCLU expenses as it did in 2003.

25. DPD, formerly known as DCLU, is generally the construction planning and permitting arm of Seattle. DPD develops, administers, and enforces standards for land use, design, construction, and housing within the city limits. It is also responsible for long-range planning in Seattle. DPD develops policies and codes related to environmental protection, development, housing and community standards, including the Seattle Land Use Code, the State Environmental Policy Act (SEPA), the Seattle Shoreline Master Plan, the Environmental Critical Areas ordinance, the Seattle Building Code, the Seattle Mechanical Code, the Seattle Energy Code, the Stormwater, Grading and Drainage Control Ordinance, the Housing and Building Maintenance Code and the Seattle Noise Ordinance. Each year DPD approves over 23,000 land use and construction-related permits and performs approximately 80,000 on-site inspections. The work includes public notice and involvement for master use permits; shoreline review; design review; approval of permits for construction, mechanical systems, site development, elevators, electrical installation, boilers, furnaces, refrigeration, signs and billboards; annual inspections of boilers and elevators; home seismic retrofits; and home improvements workshops in the community. DPD also enforces compliance with community standards for housing, zoning, shorelines, tenant relocation assistance, just cause eviction, vacant buildings, and noise, responding to over 4,000 complaints annually. In June 2002 a number of long-range physical planning functions were added to the department's mission, including the Seattle Planning Commission. DPD is now responsible for monitoring and updating the City's Comprehensive Plan; evaluating regional growth management policy; developing sub-area and functional plans; preparing urban design plans; developing land use policy; and staffing the Seattle Planning Commission and the Seattle Design Commission.

26. In 1979 the City's Law Department issued an opinion letter to the City's Budget Director in

1 which the Law Department opined that the examination and approval of plans constitutes part of Seattle's
2 process for issuance of a permit and represents a general governmental function administered by the
3 Building Department, and that issuance of building permits is an exercise of the City's regulatory
4 authority. The letter explained:

5 "Utilities invariably operate in an organized society where governmental services are provided.
6 Many of these services assist utility operations, e.g., inspections of electrical wiring by building
7 inspectors provide a safer, more efficient use of power; good streets make access to and servicing
8 of utility poles and appurtenances more convenient than over natural terrain; and firefighters put
9 out fires at transformers and in underground vaults saving expensive equipment and damage to the
10 utility system. If indirect benefits were a foundation for using funds derived from the rate payers
for a "public service industry", all appropriations for utility purposes would contain an allowance
for the support of the general government and the severance contemplated by the phrase '...in any
financial manner whatever' could not be given practical effect."

11 The opinion letter concluded:

12 "In our opinion, your proposal for assessing the Light Fund a portion of the cost of 'checking and
13 examining plans to insure compliance with the City's Energy Code provisions' would violate
14 RCW 43.09.210, as interpreted by Attorney General's opinions and applied in actions taken
pursuant to reports of audit examinations."

15 27. More recently, DPD has been engaged by City Light, through a series of Memoranda of
16 Agreement entered into by DCLU and City Light, to support City Light's energy conservation program
17 and green building program at a level above DPD's basic services. City Light's energy conservation
18 program as developed through the energy code was supported for a number of years by the Bonneville
19 Power Administration's conservation initiatives. When BPA ceased paying for energy code development
20 and these conservation programs in the mid-1990's, City Light continued the programs through the
21 MOA's with DPD.
22

23 28. Advancing the energy code refinements and enhancements and supporting the green
24 building program provide substantial benefit to City Light because investment in conservation
25

1 improvements on the front end is much more cost effective than retrofitting conservation measures into
2 existing buildings.

3 29. If City Light performed these services itself, permit-seekers would be required to visit more
4 than one City office at greater cost. These specific services facilitate the primary utility function of
5 furnishing electricity to utility customers.

6 **G. Human Services Department**

7 30. The City charged City Light \$258,169 in 2001 and \$765,307 in 2002 for expenses of the
8 City's Human Services Department (HSD).

9 31. The primary function of the HSD is to assist senior citizens and low-income citizens.
10 Within that mission, HSD has entered a Memorandum of Agreement to provide services that serve City
11 Light purposes. Pursuant to the MOA, HSD provides eligibility screening and customer service delivery
12 for City Light's low-income (including certain senior and disabled persons) rates and its Project Share.
13 Using the HSD to administer these programs is more effective and less expensive for City Light than
14 developing its own separate expertise and resources and allows more widespread application of the
15 program.
16

17 **H. Office of Housing**

18 32. The City charged City Light, or required City Light to incur, approximately \$1,813,000 in
19 2000, \$1,852,456 in 2001, \$1,898,768 in 2002, \$1,946,237 in 2003, and approximately \$498,723 through
20 the first quarter of 2004, for expenses of the City's Office of Housing (OH), including conservation
21 assistance provided by City Light to citizens served by OH and expenses of OH program administration.
22

23 33. The function of Seattle's Office of Housing is to promote the livability of housing in the
24 City, for the city-wide benefit of Seattle's citizens. Among the services provided by OH is the promotion
25

1 of weatherization and other conservation programs to improve the quality, and lower the costs, of housing
2 in the City.

3 34. City Light has engaged the OH, through a Memorandum of Agreement, to promote and
4 facilitate City Light's standard weatherization programs, which are part of City Light's conservation
5 programs, in low-income, single- and multi-family structures. The OH has much more extensive contacts
6 with low-income housing developers and landlords than does City Light. It also has the ability to leverage
7 other sources of funds to meet the full expense of installing conservation improvements. If City Light
8 supported this program through its own staff, the effort would be less cost-effective. These services serve
9 City Light's primary utility function of furnishing electricity to utility customers.
10

11 **I. Emergency Management**

12 35. Seattle charged City Light \$236,488 in 2000, \$242,400 in 2001, \$ 248,460 in 2002,
13 \$268,131 in 2003, and approximately \$67,033 through the first quarter of 2004, for expenses of the City's
14 Emergency Management program.
15

16 36. Seattle's Emergency Management program originated in the Seattle Fire Department. In
17 1991 the Mayor, seeking broader citywide participation and coordination, moved the City's emergency
18 management function to the Department of Administrative Services (now called the Executive Services
19 Department). Since 1997 the City's Emergency Management program has been a part of the Seattle Police
20 Department.
21

22 37. The City's Emergency Management program is a section of the Special Operations Bureau
23 of the Seattle Police Department devoted to citywide disaster preparedness, response, recovery and
24 mitigation. Its purpose is to provide a coordinated response by City departments to any emergency that
25 affects more than one department, such as earthquake, terrorist attack, disabling fire, or similar event. It

1 places a strong emphasis on individual and community preparedness, and provides a key liaison function
2 between the City and its state and federal emergency management counterparts. Among other things, it
3 operates its Emergency Operations Center, which acts as a central command center by city officials and
4 other support agencies during a serious emergency or disaster.

5 38. City Light takes part in the City's planning, training, "tabletop exercises," and drills that
6 simulate actual emergencies. City Light also has an identified position in the Emergency Operations
7 Center when the Response Plan is activated.

8 39. City Light has a major stake in emergency planning, through potential vulnerability of its
9 electric transmission and distribution systems and the effect on other departments of government and on
10 citizens if electricity is widely disrupted for an extended time. The Emergency Management program of
11 the Seattle Police Department serves the primary utility function of furnishing electricity to utility
12 customers.
13

14 **J. City Attorney's Office**

15 40. The expenses of the City Attorney's Office for this litigation and the related *Sonntag*
16 litigation have been charged entirely to City Light rather than to the City itself or its General Fund. The
17 amounts of those expenses are as shown in Seattle's Stipulated Facts on Law Department Expenses.
18

19 41. The City of Seattle sued the State of Washington and others in the *Sonntag* litigation. The
20 City of Seattle is the defendant in *Okeson v. Seattle*..

21 42. The *Sonntag* declaratory judgment action was initiated as a result of franchise negotiations
22 with the City of Shoreline and other suburban cities served by City Light. Providing streetlights as part of
23 the electric service was a precondition enunciated by the suburban cities to granting Seattle the electric
24 service franchise in those communities. Without the ability to provide this service, Seattle was at risk of
25

1 losing these service areas to newly formed cities that had the ability, like Seattle, to establish their own
2 electric utilities. Seattle pursued this litigation as a business decision for the benefit of City Light.

3 43. In the *Okeson* litigation Seattle seeks to defend City Light's business integrity in cost-
4 effective use of services that are available from other departments of the City, the stability of City Light's
5 budget, and the integrity and stability of City Light rates.

6 44. The services of the City Attorney's Office in this litigation and the related *Sonntag*
7 litigation therefore were intended to, and have, benefited City Light. The charges to date for these services
8 are reasonable.
9

10 **K. One Percent for the Arts**

11 45. City Light is required to contribute funds to the City's Public Art program run by the
12 Office of Arts and Cultural Affairs (formerly Seattle Arts Commission), through the City's One
13 Percent For Art ordinance, Seattle Municipal Code Ch. 20.32, adopted in 1973. Under this ordinance,
14 City Light is required to contribute to Seattle's Municipal Arts Fund one percent each year of the
15 utility's capital improvement budget for construction within Seattle city limits. The Municipal Arts
16 Fund, under the direction of the Office of Arts and Cultural Affairs, spends money to support Seattle's
17 Public Art program to integrate art work and artists' visions into public settings, expand the public's
18 experience with visual art, and create enduring public art projects. The City Light contributions fund
19 site-integrated art works in conjunction with construction projects, the purchase of portable and free-
20 standing art works that are displayed in City buildings and on public sites, and special projects such as
21 publications, exhibitions, films, and artists-in-residence programs in City departments. City Light
22 representatives work with the Office of Arts and Cultural Affairs to choose suitable art and art
23 projects. Each piece of art purchased with City Light money becomes a physical asset of City Light.
24
25

1 Many of these art works have considerable value and some have increased substantially in value since
2 they were acquired.

3 46. The Office of Arts and Cultural Affairs earmarks all funds received from City Light
4 within the Municipal Arts Fund, and accounts for those funds separately from funds contributed by
5 other City departments. In the last four years from 2000 through 2003, the Office of Arts and Cultural
6 Affairs has spent \$2,823,770.50 of City Light funds for public art projects. This includes amounts
7 spent each year for art projects funded solely with City Light funds: \$407,438.99 in 2000,
8 \$342,944.45 in 2001, \$624,562.91 in 2002, and \$357,964.30 in 2003.
9

10 47. The total also includes City Light funds expended each year for art projects funded by
11 multiple departments based on a percentage allocated to City Light by the Office of Arts and Cultural
12 Affairs. City Light's portion of these multi-funded projects was \$31,609.17 in 2000, \$91,337.83 in
13 2001, \$37,919.07 in 2002, \$57,374.17 in 2003, an additional \$111,000.00 spent for the "Salmon in the
14 City" project and an additional \$25,000.00 spent for the Pine Street improvement project.
15

16 48. The approximately \$2.8 million total also includes \$100,000.00 spent on the Marion
17 McCaw Hall "Dreaming in Color" art project. Although Exhibit 36 does not include funds spent on the
18 "Dreaming in Color" light sculpture, City documents show that \$120,000.00 in City Light funds were
19 allocated to the project, and Ms. Goldstein's testimony and various City documents demonstrate that
20 the project was completed.

21 49. Pursuant to a Memorandum of Agreement, City Light contracts with the Office of Arts
22 and Cultural Affairs to manage City Light's collection of art. In the past four years, City Light has paid
23 \$303,135.10 in collection management expenditures for the management of City Light's portion of
24
25

1 Seattle's extensive portable art collection, and \$333,484.62 in costs allocated to City Light for project
2 management expenses for City Light art projects other than the portable works collection.

3 50. Much of the approximately \$2.8 million in City Light funds spent by the Office of Arts
4 and Cultural Affairs from 2000 through 2003 was spent to benefit the general public, not City Light
5 ratepayers.

6 51. With respect to the numerous art projects funded with City Light funds from 2000
7 through 2003, the majority of such funds were spent on art purchases or art projects with a general
8 governmental purpose, rather than a legitimate utility purpose. Only the following purchases and
9 projects have a sufficient nexus to legitimate utility purposes:
10

11 Portable Artworks that are in City Light's permanent collection and are the physical asset of
12 City Light

13 City Light Photographer-in-Residence (McCracken)

14 City Light's North Service Center renovation

15 City Light's South Service Center renovation

16 Creston Nelson Substation renovation and artwork

17 Boundary Dam documentary film

18 Electric Gallery substation wall (because it provides a pleasant work area for City Light
19 employees)
20

21 Temple of Power gazebo at Newhalem Dam

22 Oculus Portals at Boundary Dam

23 Georgetown Steam Plant project

24 Website aspect of Skagit Streaming
25

1 The remaining projects, including but not limited to Wall of Death, Wave Rave Cave, McCaw
2 Hall light installation, Ballard Gateway Project, Galer Street Overpass Project, Salmon in the City,
3 remaining expense of Skagit Streaming, Second Avenue Extension, and West Lake Union Pathway,
4 have insufficient nexus to a utility purpose.

5
6 Based on the foregoing Findings of Fact the Court enters the following:

7
8 **CONCLUSIONS OF LAW**

9 1. Seattle, as a first-class charter city, has authority under RCW 35.92.050 and 35.22.280(15)
10 to operate a municipal electric utility.

11 2. Seattle City Light is a department of the City of Seattle. SMC 3.08.010.

12 3. The Superintendent of City Light, among other duties, manages and operates the light and
13 power system; enforces and implements City ordinances, contracts, and rules relating to the department;
14 and performs other duties as directed by the City. SMC 3.08.030.

15 4. The Washington Supreme Court in *Okeson v. City of Seattle*, 150 Wn.2d 540 (2003) held
16 that neither Seattle Ordinance 119747 nor RCW 35.92.050 authorizes Seattle to incorporate the expenses
17 of City streetlighting within electrical rates charged to the customers of City Light because Ordinance
18 119747 imposes a tax, not a regulatory fee. Seattle is required to refund to City Light the amount it would
19 have paid in the “pseudo bills,” \$23,863,614.96. City Light is required to refund to its ratepayers
20 unlawfully collected amounts, consisting of \$21,512,141 from December 24, 1999 through November 13,
21 2003, together with a reasonable rate of return of 2% for residential ratepayers and 4.5% for institutional
22 and larger commercial ratepayers. The application of these rates of return is reserved to a hearing on
23 remedy at the conclusion of Phase II. The court also reserves to a hearing on remedy the issue of whether
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25

1 the approximately \$500,000 per month collected from ratepayers after November 13, 2003 pursuant to the
2 .0705 cents/kwh add-on should be returned to ratepayers or held in the Light Fund to compensate for
3 undercharging ratepayers for electricity during that same period.

4 5. Because City Light's imposition of illegal rates is neither an act of negligence nor a breach
5 of contract, Seattle has not waived its sovereign immunity against the imposition of pre-judgment interest,
6 and such interest is not allowed.

7 6. Additional streetlight costs sought by plaintiff from Seattle are not recoverable in this
8 action. Plaintiff's claims under the RCW 43.09.210, RCW 80.28.080, RCW 80.28.090, .100, and RCW
9 80.28.010(1) were held to be moot by the *Okeson* court. The only streetlighting charges imposed under
10 Ordinance 119747 that the Supreme Court found unauthorized were the streetlight costs passed on to
11 ratepayers. City Light's practice of charging Seattle less than full cost for streetlighting was not before the
12 *Okeson* court, the Court did not address what the streetlight rates should have been, and the decision does
13 not require reimbursement by Seattle to City Light of such expenses. Furthermore, reimbursement by
14 Seattle to City Light of these additional costs would constitute retroactive ratemaking and would require
15 retroactive adjustment in other streetlight rates as well. As a matter of policy, such retroactive ratemaking
16 would violate the fundamental principle of ratemaking that the customer must know in advance what the
17 cost will be so the customer can choose how much electricity to use, and this court declines to contravene
18 this principle.

19 7. The following services serve a general governmental function rather than the primary
20 utility function of furnishing electricity to utility customers: Mayor's Office staff work; and Small
21 Business Assistance program. Consequently the expenses of the Mayor's Office and the Small Business
22 Assistance program may not be allocated to City Light, and Seattle's General Fund must refund to City
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1 Light all such expenses charged to and paid by City Light since January 1, 2000.

2 8. A portion of the following services serve a City Light function of furnishing electricity to
3 utility customers: Office of Sustainability and Environment; Department of Planning and Development;
4 Office of Housing; Department of Human Services, and Emergency Management. For example, OSE may
5 properly charge City Light a reasonable allocation for expenses of specific services such as technical
6 expertise on reducing pesticide and herbicide use, greenhouse gas emissions, and truck fleet emissions, but
7 the expenses of general governmental functions of OSE such as coordinating urban forest decisions with
8 other Seattle departments, or participating in a coordinated response to the West Nile virus, may not be
9 charged to City Light. The proper allocation of these expenses to City Light shall be decided in Phase II of
10 this trial.
11

12 9. City Light may permissibly purchase art or fund art projects to beautify its own offices
13 and customer service facilities, but may not fund art that is displayed in other City offices or in
14 permanent or traveling public exhibitions. City Light may not expend utility funds to purchase art or
15 fund art projects that have the primary purpose of improving City Light's image in a particular
16 neighborhood or community, or cultivating public relations. City Light may not spend utility funds for
17 the purpose of mitigating a substation's appearance, when the primary purpose of the art is to provide
18 artistic benefit to the surrounding neighborhood and the public as a whole. City Light may permissibly
19 spend utility funds to educate the public about conservation, but the Office of Arts and Cultural Affairs
20 may not use the conservation education rationale as justification for using City Light funds to support
21 an art project merely because it mentions salmon, or contains illuminated art work. The Office of Arts
22 and Cultural Affairs may not spend City Light funds on art or art projects that City Light could not
23 fund itself.
24
25

1 10. The City may also charge City Light for the costs of maintaining City Light's portable
2 art works collections and permissible utility art projects described above as having a sufficient nexus
3 to a legitimate utility purpose. All other amounts, which will be calculated in connection with final
4 rulings on implementation of the remedy, shall be transferred from the General Fund to the Light
5 Fund. The issue of whether non-portable installations now carried as a physical asset of City Light
6 may be transferred to the City's ownership is reserved to later hearing on the remedy in this case.
7

8 11. The City's One Percent For Art ordinance, SMC Ch. 20.32, is invalid as applied to the
9 City's proprietary electric utility, City Light. Seattle shall henceforth be prohibited from enforcing its
10 One Percent For Art ordinance with respect to City Light. City Light itself is not prohibited from
11 purchasing art or funding art projects, as long as proprietary utility funds are spent only on art or art
12 projects with a close nexus to the utility's primary purpose of furnishing electricity to ratepayers.
13

14 12. The expenses of the City Attorney's Office in the *Okeson* and *Sonntag* litigation serve City
15 Light. City Light is the real department-in-interest in both cases. These expenses are properly charged to
16 City Light.

17 13. The details of the remedy in this case and its implementation are reserved to the conclusion
18 of Phase II of the trial.
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DATED this 21st day of May, 2004.

Honorable Sharon S. Armstrong

1 **Exhibit A**

2 The following witnesses testified at trial, in approximate order of appearance:

3 **Streetlight interest rates:**

4 Glen Lee (City witness)

5 Dennis Conrad (plaintiffs' witness)

6 **Other matters:**

7 Plaintiffs called the following witnesses:

- 8
- 9
- 10 1. Doris Burns, named plaintiff
- 11 2. Barbara Goldstein, Office of Arts and Cultural Affairs, City of Seattle
- 12 3. James P. Ritch, Deputy Superintendent for Finance and Administration, City Light (including
- 13 streetlight remedies)
- 14
- 15 4. Carol Everson, Director of Finance, City Light (largely streetlight remedies)
- 16
- 17 5. Dennis Conrad, plaintiffs' expert witness (streetlight remedies)
- 18
- 19 6. Art Oki, finance analyst, Seattle City Attorney's Office, by deposition
- 20
- 21 7. Margaret Pageler, by parts of discovery deposition; City added balance of discovery deposition
- 22 and all of subsequent preservation deposition
- 23
- 24 8. Carol Opatrny, by preservation deposition, direct testimony; City added all cross-examination
- 25 but objected to admission of Opatrny testimony
- 26
- 27 9. Jessica Ritts, legal assistant in plaintiffs' counsel's office

28 Defendant called the following witnesses:

- 29 1. Dwight Dively, Director of Finance, City of Seattle

2. Andrew Lofton, Deputy Executive Director of Finance and Administration, Seattle Housing Authority; formerly Chief of Departmental Operations, Office of the Mayor
3. Brenda Bauer, Director of Contract Services, City of Seattle
4. Ben Noble, Supervising Analyst, Central Staff, City of Seattle
5. Steven Nicholas, Director, Office of Sustainability and Environment, City of Seattle
6. Cass Magnuski, webpage modification, City of Seattle
7. Gary Zarker, retired superintendent, Seattle City Light
8. Stephen DiJulio, expert witness for City of Seattle
9. Ruth Riddle, assistant audit manager, State Auditor
10. Carol Everson, Director of Finance, City Light (including streetlight remedies)
11. By email to Court and opposing counsel: Seattle's Stipulated Facts on Law Department Expenses, with accompanying spreadsheet of direct costs, in *Sonntag* and *Okeson*

EXHIBIT B

Plaintiffs' Exhibits:

1, 25-30, 35-39, 44-74, 78-81, 83-91, 94, 94A, 96-98,
103-109, 112-115, 123, 140-146, 170-196;

For limited purpose: 40-43

Defendant's Exhibits:

249, 253, 256-271, 273-274; 277-289,
307-313, 345-346, 347 (illustrative purposes only), 348-349, 351-355, 356 (DiJulio CV only;
declaration refused),
357